Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNRL-S, MNDL-S, FFL,

Introduction and Preliminary Matters

This hearing dealt with cross applications filed by the parties. On January 30, 2023, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*").

On February 11, 2023, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with G.D. attending as his translator. All parties agreed that the other person that the Landlord named as a Respondent on this Application was not a Tenant. As such, the Style of Cause on the first page of this Decision was amended to remove this person.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by registered mail (the registered mail tracking number is noted on the first page of this Decision) and by email on February 9, 2023. She testified that this registered mail package was returned to sender, so she made a copy and attached one copy to the Landlord's door, and one copy to the door of the rental unit, on some unknown date.

The Landlord confirmed that he received this package at his house approximately a week ago. However, based on the Tenant's solemnly affirmed testimony, I am satisfied that the Landlord was deemed to have received this package five days after it was sent to him by registered mail. As such, this evidence will be accepted and considered when rendering this Decision.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by email on February 28, 2023, even though records indicate that this package was ready to be served on February 15, 2023, and was required to be served by February 18, 2023, at the latest in accordance with Rule 3.1 of the Rules of Procedure. He did not provide any valid reason for serving this package late, and he confirmed that he did not have consent from the Tenant to serve documents by email.

The Tenant initially advised that she did not receive this email as she was not computer literate. However, when she was questioned about her computer proficiency, and that she attempted to serve her own Notice of Hearing package to the Landlord by email, her submissions changed to then possibly receiving this email. The quickly changing testimony about receipt of this email caused me to be doubtful of the Tenant's reliability.

Regardless, while it appeared that the Landlord served this Notice of Hearing package late, I elected to proceed with the hearing anyways as it was apparent that there were other significant issues with both parties' Applications anyways.

In addressing the Tenant's Application, I note that the Tenant advised that she provided her forwarding address in writing to the Landlord by registered mail on January 30, 2023. Moreover, records indicate that she made this Application on the same date.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and/or pet damage deposit at the end of the tenancy. Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or

file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Tenant may apply for double the deposit.

Given that the Tenant filed this Application on the same date that the forwarding address in writing was sent to the Landlord, I am satisfied that the Tenant applied for the doubling of the deposit prematurely. In addition, I find that serving the Application with her forwarding address on it constitutes providing it in writing. The Landlord is put on notice that he now has the Tenant's forwarding address, and he must deal with the security deposit pursuant to Section 38 of the *Act*. The Landlord is deemed to have received this Decision **five** days after the date it was written and will have 15 days from that date to deal with the deposit accordingly. As an aside, the Tenant verbally read out her forwarding address during the hearing, which was the same address on her Application, and the Landlord recorded it and confirmed that he correctly documented it (the Tenant's forwarding address is also noted on the first page of this Decision).

As such, the Tenant's Application regarding the security deposit is dismissed with leave to reapply. If the Landlord does not deal with the deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received this Decision, the Tenant can then re-apply for double, pursuant to the *Act*.

In addressing the remaining claim in the Tenant's Application, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Tenant originally applied for a Monetary Order for compensation in the amount of $95,000.00, which far exceeds the maximum amount permitted to be claimed under the *Act*. However, she then completed another updated Application seeking a Monetary Order for compensation in the amount of $35,000.00, but she did not fill out a Monetary Order Worksheet, nor did she break down this claim anywhere in her Application. Furthermore, when she was asked during the hearing how this amount was derived, she acknowledged that she simply chose this amount because it was the most she could ask for, and she hoped that I would be able to award "whatever amount" I determined was acceptable.

As the Tenant claimed for compensation in an amount that there was clearly no justification for, and was simply chosen as the most she could possibly request, I find that it would be prejudicial to proceed against the Landlord as it would be impossible for him to even understand what the Tenant was specifically claiming for. Consequently, I do not find that the Tenant has made it abundantly clear to any party that she is certain

of even what would be close to the exact amount she believes is owed by the Landlord. As I am not satisfied that the Tenant outlined her claims precisely, with clarity, I do not find that the Tenant has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For this reason, I dismiss the Tenant's entire Application with leave to reapply.

In addressing the Landlord's claims, I reiterate that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. On the Landlord's Application, he made a claim for compensation in the amount of $6,700.00 and described the issue as follows, "I NEED FULL MONEY BECAUSE I AM ONLY ONE IN FAMILY WHO EARING [sic]." I find it important to note that the Landlord did not fill out a Monetary Order Worksheet, nor did he indicate in any part of this Application what this amount was for or how it was broken down. Moreover, the Landlord made a second claim for compensation in the amount of $2,600.00, and he described the issue as follows, "THIS IS THE TOTAL COST FOR REPAIRING THE HOUSE." Again, how this amount was calculated was not broken down or explained in any part of this Application. In addition, only two receipts were provided as documentary evidence, and they totalled an amount that was significantly lower than the amount claimed.

As the Landlord claimed figures that were not explained or close to precise, I find it would be prejudicial to proceed against the Tenant as it would be difficult for her to even understand what the Landlord was specifically claiming for. Similar to the Tenant's Application, I do not accept that it is reasonable for either party to make an Application seeking a random amount of compensation from the other party, and then only attempt to explain the correct amount that they are seeking at the hearing.

As I do not find that the Landlord has made it abundantly clear to any party that he is certain of what the exact amounts he believes is owed by the Tenant, I am not satisfied that the Landlord outlined his claims precisely, with clarity. As such, I do not find that the Landlord has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For this reason, I dismiss the Landlord's Application with leave to reapply.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

Based on above, I dismiss the Tenant's Application with leave to reapply. However, the Landlord is put on notice that he now has the Tenant's forwarding address and is deemed to have received this Decision **five** days after the date it was written. If the Landlord does not deal with the security deposit, pursuant to Section 38 of the *Act*, within 15 days of being deemed to have received this Decision, the Tenant can then re-apply for double, pursuant to the *Act*.

The Landlord's Application is dismissed with leave to reapply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 14, 2023

Residential Tenancy Branch